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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,089	04/15/2004	Sammy Ming Kit Chau	64032/P015US/10404210	7160
29053	7590	03/23/2010		
FULBRIGHT & JAWORSKI L.L.P			EXAMINER	
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SUITE 2800				
DALLAS, TX 75201-2784				
			ART UNIT	PAPER NUMBER
			2617	
			MAIL DATE	DELIVERY MODE
			03/23/2010 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



1           The above-entitled matter came on for hearing on Tuesday,  
2   March 9, 2010, commencing at 1:01 p.m., at the U.S. Patent and Trademark  
3   Office, 600 Dulany Street, Alexandria, Virginia, before Jan M. Jablonsky,  
4   Notary Public.

5           MR. LIVINGSTONE: Can I proceed?

6           JUDGE KRIVAK: I think you can. You may.

7           MR. LIVINGSTONE: Okay. The issues in this case have been  
8   fully briefed, but with the Board's permission, I would like to explain to the  
9   Board some of the distinctions between the art and the claims in support of  
10  our position that the current claims are patentable.

11          JUDGE KRIVAK: Okay.

12          MR. LIVINGSTONE: First, I would like to give a brief  
13  overview of the background to the invention. The invention generally  
14  relates to wireless communications, and specifically to managing wireless  
15  communications associated with a plurality of mobile wireless devices.  
16  Wireless devices communicate through access points that cover specific  
17  geographic areas. If the wireless device is located on a vehicle, as the  
18  wireless device moves from the service area of a first access point to the  
19  service area of a second access point, the mobile device has to switch  
20  communication from one access point to another.

21          JUDGE KRIVAK: Okay.

22          MR. LIVINGSTONE: That switch can result in a loss of  
23  communication data as the wireless device loses communication from the  
24  first access point and initiates communication with the second access point.

25          JUDGE KRIVAK: Okay.

1 MR. LIVINGSTONE: From this background the current  
2 application disclosed embodiments of the invention where an intelligent  
3 wireless switch switches communication between wireless devices and  
4 wireless access points. The wireless switch enables substantially continuous  
5 wireless communications to a car by using a plurality of stations to associate  
6 with different access points. I'd like to address now the distinction between  
7 the claimed invention and the references. And if it's okay with the Board, I'd  
8 like to start with Claim 13, which is an apparatus claim. Is that okay?

9 JUDGE KRIVAK: Yes.

10 MR. LIVINGSTONE: Okay. Claim 13 requires a wireless  
11 switch comprising plurality of stations for communicating with the plurality  
12 of access points. Further, the wireless switch comprises a package switch  
13 controller for directing data between the plurality of stations and the  
14 plurality of wireless devices.

15 JUDGE KRIVAK: Okay.

16 MR. LIVINGSTONE: Now the Examiner concedes that the  
17 primary reference, Averbuch, does not teach a plurality of stations of a  
18 wireless switch for communicating with the external access points.

19 JUDGE KRIVAK: Okay.

20 MR. LIVINGSTONE: Consequently the Examiner relies on de  
21 Torbal's on board unit, OBRU to teach the plurality of stations of a wireless  
22 switch.

23 JUDGE KRIVAK: Okay.

24 MR. LIVINGSTONE: But based on the explicit teachings of de  
25 Torbal, the OBRU is not a wireless switch. The OBRU merely monitors the  
26 position of the vehicle as it travels along the planned route relative to the

1 base stations which will serve the vehicle along its route. And this  
2 disclosure is in paragraph 21 of de Torbal.

3 JUDGE KRIVAK: Okay.

4 MR. LIVINGSTONE: Significantly, paragraph 25 of de Torbal  
5 says, and -- "The on board unit 26 does not control or become involved in  
6 the normal communications between the mobile radios 28 and the cellular  
7 network." But as if paragraph 25 was not clear enough, de Torbal states in  
8 paragraph 32, "Again, the on board unit 26 is not involved in the actual  
9 handover operations. Existing and often standardized handover procedures  
10 and protocols are performed, just earlier in time." Because the on board unit  
11 does not control or become involved in the normal communications of the  
12 mobile radios, de Torbal, the secondary reference, does not teach a wireless  
13 switch, much more a plurality of stations of a wireless switch.

14 JUDGE MANTIS MERCADER: Mr. Livingstone, I have a  
15 question.

16 MR. LIVINGSTONE: Mm-hmm.

17 JUDGE MANTIS MERCADER: What about Claim 1? In  
18 Claim 1 you don't recite anything about a plurality of stations. It says -- it  
19 basically recites a second station and a first station.

20 MR. LIVINGSTONE: It does.

21 JUDGE MANTIS MERCADER: So what prevents us from  
22 reading a first station and a second station being a single station, one single  
23 station? Because, if I may, like, in -- it could -- there could have been a  
24 dependent claim, let's say, where it says wherein the first station and the  
25 second station are the same station, or the first station and the second station  
26 are different stations. What I'm asking is, reading Claim 1, I don't see

1 anything where it says that the first station and the second station are  
2 different stations?

3 MR. LIVINGSTONE: Well, by the mere fact that we  
4 designated a first station and a second station, our intention is to claim two  
5 separate and distinct stations. The read -- the specification -- and for  
6 example, the diagrams. We identify two separate stations, which is -- for  
7 example, in Figure 3, it's 201-1 and 201-2.

8 JUDGE MANTIS MERCADER: No. I understand that. I  
9 understand that. It's just that from my experience there have been cases  
10 where the applicant will say a first something and a second something, and  
11 then there will be a dependent claim saying wherein the first and second  
12 something are the same or they're different.

13 MR. LIVINGSTONE: Right.

14 JUDGE MANTIS MERCADER: So what I'm saying is that  
15 Claim 1 does not preclude having a single station where it serves as a first  
16 station and a second station.

17 MR. LIVINGSTONE: Okay. If you look at the last limitation  
18 of Claim 1 --

19 JUDGE MANTIS MERCADER: Okay.

20 MR. LIVINGSTONE: -- it says switching to routing data  
21 between said plurality of wireless devices and the second -- said second  
22 access point using said second station. So that switching could not occur if  
23 the first and second station were the same. You can't switch within one  
24 station. You require two stations to switch. And further --

25 JUDGE MANTIS-MERCADER: Is that true? I mean, you're  
26 switching the routing data between, and what you're switching between is

1 the plurality of wireless devices and the second access point. You're  
2 switching between the first access point and the second access point.

3 MR. LIVINGSTONE: Mm-hmm.

4 JUDGE MANTIS MERCADER: -- through the station. But  
5 what I'm saying is could there be a single station, just as in the primary  
6 reference that the examiner used, where there was a just a single station, a  
7 single base station that was used to change between access points?

8 MR. LIVINGSTONE: No, it couldn't. Because we are  
9 associating a specific first station with a specific access point, and then a  
10 separate and second station with a second access point. If we don't  
11 distinguish between what is this -- claimed as a first and a second station, the  
12 equivalent of that is probably combined in the access points. You know,  
13 there's a first and a second access point. I think a reasonable reading of the  
14 claim is that we require two separate -- separate stations within the wireless  
15 switch. And that is one of the reasons why -- you mentioned that dependent  
16 claim where you -- you could have claimed that the first and second stations  
17 are the same station. That's why we didn't, because that was not the intent.

18 JUDGE MANTIS MERCADER: No. But you could have also  
19 said -- where the first and the second station are different. That's what I'm  
20 saying. That's it's --

21 MR. LIVINGSTONE: I read in the claim in light of the  
22 specification -- I believe it's clear that we would require two different  
23 stations, and that it would not be one station. And, you know, one of  
24 ordinary skill in the art would interpret it as two separate stations.

25 JUDGE MANTIS MERCADER: Okay. Okay, thank you.

26 MR. LIVINGSTONE: Okay. Could I sum up on Claim 13?

1 JUDGE KRIVAK: Yes.

2 MR. LIVINGSTONE: Yes. To summarize, neither Averbuch  
3 or de Torbal teaches a wireless switch with a plurality of stations, and thus  
4 combining Averbuch and de Torbal does not meet Claim 13.

5 JUDGE KRIVAK: Okay.

6 MR. LIVINGSTONE: We have discussed a little Claim 1, but  
7 I'd like to make a few points with respect to Claim 1. Is that okay?

8 JUDGE KRIVAK: Absolutely.

9 MR. LIVINGSTONE: Okay. Claim 1 requires associating a  
10 second station of said wireless switch with said second access point. The  
11 Examiner concedes that the primary reference Averbuch does not teach a  
12 first and a second station of a wireless switch. Now is -- this deficiency of  
13 Averbuch is very significant, because if Averbuch does not teach a first and  
14 a second station, it cannot teach any of the steps that require a second  
15 station, such as the last two steps. And I think this even ties into the point  
16 that the Judge was making earlier, because the last two steps require  
17 monitoring signal strengths of said first and second access points as received  
18 by said first and second stations. And switching to routing data between  
19 said plurality of wireless devices and said second access point using said  
20 second station in response to said monitoring.

21 So as it stands here based on the Examiner's concession that  
22 Averbuch does not teach a second station, the reference Averbuch does not  
23 teach at least three steps of Claim 1. Because if there's -- if it does not teach  
24 does a second station, it cannot teach the other steps that require a second  
25 station. So our position is that Averbuch is not even a proper primary  
26 reference for rejecting Claim 1.



1           And if we turn to the secondary reference, which is again de  
2   Torbal, the deficiencies are as we explained earlier. De Torbal is simply not  
3   a wireless switch. The explicit disclosure of de Torbal says that. It does not  
4   get involved in the normal communications between the wireless devices  
5   and the -- and the access points. Therefore, de Torbal cannot cure  
6   Averbuch's failure to teach a second station and the steps requiring a second  
7   station. So to summarize, Averbuch and de Torbal, that combination does  
8   not meet Claim 1.

9           Claim 9 similarly requires a wireless switch comprising a  
10   plurality of stations. And for the reasons discussed earlier, Averbuch in  
11   view of de Torbal does not teach the limitations of Claim 9.

12           Any questions on -- on what I've said before?

13           JUDGE MANTIS MERCADER: You also argued something  
14   about motivation, right, in your Brief?

15           MR. LIVINGSTONE: Mm-hmm.

16           JUDGE MANTIS-MERCADER: Do you mind going over that  
17   again?

18           MR. LIVINGSTONE: In the Brief -- well, we discussed in the  
19   Brief whether the Examiner was using impermissible hindsight  
20   reconstruction. The basis of asserting that is one, I mentioned earlier,  
21   Averbuch does not teach at least three steps of the claimed method, and that  
22   shows that Averbuch is not a proper primary reference. And to use it is  
23   reconstructing the art to meet the claims improperly.

24           Further, de Torbal specifically -- we pointed this out in the  
25   Appeal Brief and the Reply Brief, that de Torbal specifically states -- and it  
26   states -- it said it twice. It does not get involved in the communications

1 between the wireless devices and the access point, so it cannot teach a  
2 wireless switch. So relying on de Torbal to cure -- to cure Averbuch is  
3 really impermissible hindsight reconstruction.

4 Does that address what you were referring to in the Appeal  
5 Bbrief?

6 JUDGE MANTIS MERCADER: Yeah. One last question.  
7 Where is the wireless switch defined in the claim?

8 MR. LIVINGSTONE: If you look at paragraph 9 of the  
9 specification, it talks about the wireless switch. And it says, "The intelligent  
10 wireless switch enables substantially continuous wireless communications to  
11 occur by successively associating with exterior wireless access points  
12 through its plurality of wireless stations." And it says, "Specifically when  
13 the intelligent wireless switch first detects an access point, one of" -- so one  
14 of the plurality of stations, meaning it could not be one. "One of the  
15 plurality of stations associates with that access point. It's  
16 associates" -- "associated," sorry, "with the wireless devices. It's routed to  
17 and from the access points through the respective station."

18 So I think paragraph 9 reinforces our point that we need two  
19 separate first -- two separate stations at least in Claim 1, or in the other -- in  
20 Claim 13, a plurality of stations. And one cannot just interpret the claims or  
21 the spec as requiring one station instead of two or a plurality.

22 JUDGE MANTIS MERCADER: Thank you.

23 MR. LIVINGSTONE: Thank you. I think I'm out of time.  
24 Would we be able to turn over to the next appeal?

25 Whereupon, at 1:20 p.m., the proceedings were concluded.

26